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In the Supreme Court

of the United States

OCTOBER TERM, 1974

ROBERT BRADLEY JONES, HILDA STUBBINGS, SIDNEY FREEMAN, LLOYD SMITH, and MARY LOU IRVING, members of TAXPAYERS' INVESTIGATIONAL COMMITTEE OF OREGON, an unincorporated association,

Petitioners,

v.

GEORGE P. SCHULTZ, now by succession, WILLIAM E. SIMON, Secretary of the Treasury of the United States, and ROGERS C. B. MORTON, Secretary of the Interior of the United States,

Respondents.

PETITIONERS' ANSWER TO BRIEF OF AMICUS CURIAE ASSOCIATION OF O & C COUNTIES

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ARGUMENT

I. Association not statutorily created.

The Association is a voluntary association that is not authorized by law and its policies and meetings are not fully open to the public and its funds not audited by State Officers. No official report is made public.

II. Ninth Circuit ruling on standing.

The Association claims that the 18 counties are the real parties in interest. This proposition places the county officials beyond the reach of the people and runs contrary to the well-accepted rule of law that a public officer is subject to mandamus to compel compliance with a nondiscretionary duty.

These taxpayer petitioners are not in the same category as the federal taxpayer suits. Petitioners have a personal stake in a sum administratively diverted contrary to law, which sum their county officials won't pursue. See *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 409 F.2d 718, 728 (2d Cir., 1969), cert. den. 399 U.S. 905, wherein the court stated:

> "Few more unseemly sights for a democratic country operating under a system of limited governmental power can be imagined than the specter of its courts standing powerless to prevent a clear transgression by the government of a constitutional right of a person with standing to assert it."

See *Pierce* v. *Green*, 294 N.W. 237 (Ia. 1940) at 248:

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.
>
> ". . .
>
> "Courts of justice are established, not only to

decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government."

III. Reason for counties' position.

A. The Association may be able to state what its position is as a voluntary association but it should be careful not to give the impression it is speaking for the 18 O & C counties. Only through a duly constituted meeting of each County Commission can each county's position be expressed.

B. The Association, on page 3 of its brief, states:

> ". . . This 25% is over and above another 25% of the receipts which is committed by law to administration of the lands." [Emphasis supplied].

The Association admits by this statement that "another 25% . . . is *committed* to administration of the lands." [Emphasis supplied].

That is exactly what we are contending. That particular 25% is the fourth 25% under Title II of the McNary Act (50 Stat. 874). The truth of the matter is substantiated by the government's own figures. It simply is not spending the *committed* 25% on administration but is diverting millions of dollars into the general fund illegally. If given the opportunity, your petitioners can prove that beyond a shadow of a doubt.

C. On page 4, the Association refers to a "unique partnership." A partnership suggests and implies reciprocal rights. If petitioners' position is not adopted,

the so-called partnership is a sham, with the federal government being the landlord and the 18 O & C counties tenants at sufferance. This is not the intent of the Chamberlain-Ferris Act (39 Stat. 218) nor the McNary Act (50 Stat. 874).

D. On page 4, it refers to a study of Bureau of Government Research & Service. This Bureau is partly financed by the Association but in reviewing its opinion, it should be noted:

1. We agree that the government should *first* spend the fourth 25% as it is by law *committed* for administration. If more is needed, the counties and the government can reach an accord by proper means.

2. We contend that a well-run forest can be achieved by our suggested method just as well. Local participation would better insure proper spending. At the present time, our Congressmen would be hard put to explain how the money is spent.

3. Oregon, more than anyone, wants a properly-managed forest. The taxpayers favor sound economic policies just as much as anyone.

E. On page 5, the Association makes reference to a "vested interest." Its position leads to subserviency, as it leaves no basic rights in Oregon or the counties. We are at the mercy of the Congress under the Association's theory. The taxpayers are resting on the integrity of the *vested rights* already created by the Congress.

F. "Watchful local interest" as referred to on page

5 of the Association's brief is not sufficient to camouflage the consort that is taking place between the federal officials and the county officials who stand idly by and let the McNary Act be circumvented.

G. The Association also states that "collective judgment" should not be set aside "at the behest of a small group of persons with passions and motivations of obscure origins." What kind of a statement is that? Are small groups to be suspected of ulterior motives and large groups of altruistic motives?

The Association of O&C counties has a poor track record. Twenty years ago, it fought one county, Clackamas County, which was seeking a basic right under the McNary Act, *Clackamas County* v. *McKay*, 219 F.2d 479, and the counties have received tremendous benefits in spite of the Association.

The Association has consistently taken a position that leaves Oregon in a position of subserviency. It capitulates to the federal government's unfounded claim of plenary powers over these lands.

CONCLUSION

This case is unique and peculiar only to Oregon and granting standing and relief to petitioners does not open the door to numerous lawsuits and its determination settles the issue and brings finality to the controversy and is founded on law.

Respectfully submitted,

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